

(1968) 07 AP CK 0004
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 220 of 1968
In Re: P. Ramalashmamma

Date of Decision : 26-07-1968

Acts Referred:

Motor Vehicles Act, 1939 — Section 59, 61

Citation : AIR 1970 AP 178

Hon'ble Judges : Basi Reddy, Acting C.J.;Samba Siva Rao, J

Bench : Division Bench

Advocate : O. Adinarayana Reddy, for the Appellant;

Judgement

1. The husband of the appellant applied for the grant for a stage carriage permit on the route Proddatur to Kandimallayalapalli. Before the application came up for adjudication, the applicant died. On his death, the appellant applied to the Regional Transport Authority, Cuddapah, to substitute her as the applicant, in the place of her deceased husband. The Regional Transport Authority, however, was not prepared to treat her as an applicant in the place of her deceased husband. She, therefore, filed W. P. No. 1729 of 1967 in this court, for the issuance of a writ of prohibition, directing the authorities not to process further in pursuance of the notice dated 5-8-1967 proposing to consider the route in question.

2. Our learned brother, Chinnappa Reddy J., held, following the view taken by Gopal rao Ekbote J., in W. P. No. 763 of 1965 (Andh. Pra.) that the appellant, as the legal representative of her deceased husband (applicant, cannot bring herself on record to pursue the application for a stage carriage permit. This writ appeal is preferred against that decision.

3. To contend that a right accrues to the applicant on application for a stage carriage permit and such a right devolves on the legal heirs, on the death of the applicant, reliance is placed upon Secs. 59 and 61 of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). both of them however, relate only to permits and not to applications. Section 59(1) provides that a permit is not transferable, except with the permission of the Transport Authority. Section 61(1) deals with transfer of a permit on the death of its holder and says that when a

holder dies, the person succeeding to the possession of the vehicles covered by the permit, may, for a period of three months, use the permit, as if it has been granted to himself. But, that is permissible only if such person informs the Transport Authority. Within 30 days of the death of the holder and of his intention to use the permit. Sub-section 920 of section 61 further provides that the Transport Authority, on the application made in this behalf, within 3 months of the death of the holder of a permit, may transfer it to the person succeeding to the possession of the vehicle covered by the permit. Thus, the permit is transferable from one person to another, when the holder of the permit is alive u/s 59 and is transferable, on his death, to the person succeeding to the possession of the vehicles covered by the permit u/s 61, only on the permission of the Transport Authority. But, these provisions relate only to permits and do not refer or relate to applications for such permits, which are pending before the Transport Authority. It is not, therefore, possible to derive any assistance from these provisions in deciding the question, whether in a pending application for a stage carriage permit, the legal representative can be brought on record when the applicant dies.

4. While the permit is a property which can be transferred and inherited, subject of course to the conditions and requirements of law in that behalf, mere application for a stage carriage permit is not property. Every citizen may have a right to apply for a permit. But, it is difficult to hold that such a right is transferable to heritable. It is nothing but a right personal to the applicant. The legal representative, in his turn, has a right to apply, by himself, as a citizen. But he or she does not derive such right, through the deceased applicant, but as a citizen of the State. It cannot be said that the deceased applicant left behind him a right, which devolves upon his heirs and successors.

5. The Act does not contain any express or specific provision to bring the legal representatives on record or for applying the provisions of the CPC in general, and Order 22 therein in Particular, to the proceedings under the Act. It should also be noted in this connection that the cardinal principle behind Order 22 of the CPC is that the right to sue should survive. It is only when the right to sue survives, the legal representatives of the deceased plaintiff or defendant are brought on record. If the right to sue does not survive, the CPC does not provide for any legal representatives coming on record. There is no doubt, that there are cases where such rights do not survive after death and are strictly limited only to the person of the plaintiff or the defendant. Such a right dies with the person. If that claim matures into a decree then it becomes property of the successful plaintiff or defendant and devolves upon his legal representatives but not until then.

6. This view was shared by the Allahabad High Court in *Ratan Lal Gupta Vs. State Transport Authority and Another*, wherein a Division bench of that Court had to deal with a similar contention. In that case, one Munna Lal died after making an application for a stage carriage permit and his sons sought to be

substituted as the applicant as the legal representative of his deceased father. Repelling this contention, the learned Judges held:

"So far as the right of a person only to make an application for the grant of a permit is concerned, there is no doubt that such a right is neither transferable nor heritable and it does not survive on the death of the person who had originally made the application. In fact, there is no right in the strict sense of the word which a person acquires merely by making an application for the grant of a permit."

7. The Mysore High Court, however, took the contrary view in *Meenakshi v. Mysore S. T. A. Tribunal* AIR 1963 Mys 278, by holding that the legal representative of the deceased applicant can be brought on record, even though the application has not ripened into a permit. While doing so, reliance was placed on Secs. 59 and 61 of the Act. With respect, we are not inclined to agree with the learned Judges. Apparently, a distinction was not made before them, between the right which a permit confers upon a holder of the permit, and absence of any such right in a person who has merely made application and died when the application was pending. We do not, therefore, think it possible to follow that decision.

8. In *Meenakshi v. Mysore S. T. A. Tribunal* AIR 1963 Mys 278, reference was made to a Madras decision in *W. P. No. 459 of 1957, D/-5-8-1958 (Mad)*. That was a case in which one Elumalai applied for a permit to the Regional Transport Authority and that permit was granted to him. On account of the non-production of the transport vehicle in respect of which permit was decided to be granted to him, the actual issue of the permit to him was deferred and, before the permit was so issued to Elumalai, he died. One of his sons sought the delivery of the permit to him and accordingly the permit was delivered to him. The unsuccessful applications who were aggrieved by the grant of the permit to Elumalai appealed, and, during the pendency of the appeal, Elumalai's son, who had taken delivery of the permit, applied for permission to prosecute and defend the appeal, as the legal representative of his father. The appellate authority took the view that the son could not be permitted to defend the appeal as a legal representative of his father and also that the delivery of the permit to the son, after the death of Elumalai, was not within the competence of the Regional Transport Authority. In that view, it allowed the appeal and set aside the permit granted to Elumalai. The writ petition was filed against this decision before the Madras High Court by Elumalai's son. *Rajagopalan J.*, while dismissing the writ petition, expressed the view that since Elumalai was not the holder of a permit when he died, and none had been issued to him, the transfer of that permit to his son was not justified under s 61 (2) of the Act. In this context *Rajagopalan J.*, made the following observation, which is material for the present consideration:--

"The position was much the same as it would have been, had Elumalai died after making the application for a permit but before even the Regional Transport Authority considered the question of selection, except of course, that in this case,

on the strength of the order dated 24-12-1956, Elkumalai purchased the bus MDS 2249, the rights of ownership in which of course, as constituting property devolved upon Elumalai's legal representatives."

This observation lends support to the view we have taken.

9. For these reasons, we hold that the view taken by our learned brother Gopalrao Ekbote J., in W. P. No. 763 of 1965 (Andh, Pra) is right and our learned brother Chinnappa Reddy J., is equally justified in following this decision. We do not, therefore, see any merits in the writ appeal which is accordingly dismissed.

10. Appeal dismissed.